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Reply Brief Under 37 C.F.R. §41.41 (20 sheets)

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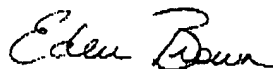
**Docket: 2000P07518US01 (1009-026) Pages: 21**

29 Jun 2005

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PATENT

JUN 29 2005

Serial No. 09/528,693

Attorney Docket No. 2000P07518US (1009-026)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s) : James Wright et al.  
Serial No. : 09/528,693  
Filed : 20 March 2000  
For : METHOD, SYSTEM AND APPARATUS FOR PROVIDING  
PRODUCT INFORMATION OVER THE INTERNET  
Art Unit : 3627  
Examiner : Andrew J. Fischer  
Docket No. : 2000P07518US (1009-026)

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**REPLY BRIEF UNDER 37 C.F.R. §41.41**

Sir:

The Applicants respectfully submit this Reply Brief in response to the Office Action of 04 April 2005 finally rejecting each of the pending claims 1-6. This Reply Brief is in furtherance of the Notice of Appeal filed 18 October 2004. Applicants respectfully request that the appeal be maintained as provided in 37 C.F.R. §41.39(b)(2).

**PATENT****Serial No. 09/528,693****Attorney Docket No. 2000P07518US (1009-026)****I. REAL PARTY IN INTEREST**

The real party in interest is Siemens Energy & Automation, Inc., a corporation having a place of business at 3333 Old Milton Parkway, Iselin, GA 3005.

**II. RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences.

**III. STATUS OF CLAIMS**

Claims 1-6 are pending in this application and have been finally rejected. Claims 7-20 were cancelled. Claims 1-6 were rejected and are the subject of this appeal. Claim 1 is the independent claim.

**IV. STATUS OF AMENDMENTS**

No amendments have been filed subsequent to the final rejection.

**IV. SUMMARY OF CLAIMED SUBJECT MATTER****Independent Claim 1**

Independent Claim 1 recites a system (see at least paragraph 18; Figure 1 indicator 102 and product 106) for providing product information (see at least paragraph 29; Figure 4 product information 404) for a predetermined product (see at least paragraph 18; Figure 1 product 106). The system comprises a product information apparatus (see at least paragraph 18; Figure 1 label 100) comprising an indicator (see at least paragraph 18; Figure 1 indicator 102), wherein the indicator (see at least paragraph 18; Figure 1 indicator 102) is contained in a memory (see at least paragraph 23; Figure 2 memory 200). The system also comprises a predetermined product (see

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at least paragraph 18; Figure 1 product 106), which is coupleable to a programmable logic controller (see at least paragraph 26), wherein the programmable logic controller (see at least paragraph 26) is coupleable to a network (see at least paragraph 26). The indicator (see at least paragraph 18; Figure 1 indicator 102) is associated with a predetermined product (see at least paragraph 18; Figure 1 product 106). The indicator is indicative of a network web page (see at least paragraph 29; Figure 4) where product information (see at least paragraph 29; Figure 4 product information 404) is provided for the predetermined product (see at least Figure 1 product 106). The network web page (see at least paragraph 29; Figure 4) comprises an on-line product support help window (see at least paragraph 29; Figure 4 help window 410).

**Dependent Claim 2**

To independent Claim 1, Claim 2 adds that the indicator (see at least paragraph 18; Figure 1 indicator 102) is specific to the predetermined product (see at least paragraph 18; Figure 1 product 106), such that a plurality of indicators (see at least paragraph 18; Figure 1 indicator 102) that direct to a plurality of web pages (see at least paragraph 29; Figure 4) are provided, each web page (see at least paragraph 29; Figure 4) providing specific product information (see at least paragraph 29; Figure 4 product information 404) relevant to the predetermined product (see at least paragraph 18; Figure 1 product 106).

**Dependent Claim 3**

To independent Claim 1, Claim 3 adds that the indicator (see at least paragraph 18; Figure 1 indicator 102) is an URL of a web page (see at least paragraph 18; Figure 1 indicator 102).

**Dependent Claim 4**

To independent Claim 1, Claim 4 adds that the system further comprises a label (see at least paragraph 18; Figure 1 label 100) affixed to the predetermined product (see at least

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paragraph 18; Figure 1 product 106), wherein the label (see at least paragraph 18; Figure 1 label 100) comprises the memory (see at least paragraph 23; Figure 2 memory 200).

**Dependent Claim 5**

To independent Claim 1, Claim 5 adds that the memory (see at least paragraph 23; Figure 2 memory 200) is a micro-chip memory (see at least paragraph 24).

**Dependent Claim 6**

To independent Claim 1, Claim 6 adds that the programmable logic controller (see at least paragraph 26) is coupled to the network (see at least paragraph 26) via means (see at least paragraph 26) for automatically interfacing to the Internet (see at least paragraph 26) to access the web page (see at least paragraph 29; Figure 4) based on the indicator (see at least paragraph 18; Figure 1 indicator 102).

**VI. GROUNDS OF REJECTION**

Claims 1-6 were rejected as indefinite under 35 U.S.C. §112.

Claims 1-6 were rejected as anticipated under 35 U.S.C. §102(b). In support of the rejection, Cragun (U.S. Patent No. 5,804,803) was applied.

Claims 1-6 were rejected as anticipated under 35 U.S.C. §102(e). In support of the rejection, Reber (U.S. Patent No. 5,940,595) was applied.

Claims 1-6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cragun in view of Ohanian (U.S. Patent No. 6,109,526).

Claims 1-6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hudetz (U.S. Patent No. 5,978,773) in view of Ohanian.

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The Office Action of 04 April 2005 objects to the specification because "The specification states 'Fig. 2 shows the memory of the present invention.' However a review of figure 2 shows that not only does figure 2 show memory 200, figure 2 also shows processor 202, internet interface 204, and display 206. Thus Applicants statement that figure 2 show 'the memory' is inaccurate. Appropriate correction is required." Applicants respectfully traverse this objection.

According to the Federal Circuit "[i]t is well settled that a patent applicant may be his own lexicographer." *W.L. Gore & Assocs. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 316 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). Here, the claim term "memory" has been clearly defined in the specification, and that definition must control examination of those claims that recite these terms.

Specifically, independent claim 1 from which each of claims 2-6 depend, recites a "memory". At least page 4 of the Specification defines the term memory by stating "[f]igure 2 shows the memory 200 of the present invention ... While the figure shows that the memory includes supporting devices such as a processor 202 and interface, the memory may be a stand-alone memory."

Thus, the objection of the 04 April 2005 Office Action that "Applicants statement that figure 2 show 'the memory' is inaccurate" is itself inaccurate. Consequently, Applicants respectfully submit that the objection to the specification is without merit and respectfully requests reversal of the objection to the specification.

**B. The Rejection of Claims 1-6 Under 35 U.S.C. §112**

As an initial matter, Applicants point out that the rejection of claims 1-6 under 35 U.S.C.

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§ 112 represents a new ground for rejection first presented in the Office Action dated 04 April 2005 and not necessitated by any amendment made by Applicants. As such Applicants respectfully note that classifying the Office Action dated 04 April 2005 as “final” is contrary to MPEP § 706.07(a), which provides “second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground for rejection that is neither necessitated by applicant’s amendment of the claims....” Applicants recognize and respectfully traverse this utter disregard of USPTO procedure and the resulting due process violations resulting from, *inter alia*, paragraph 40 of the Office Action dated 04 April 2005, which, if Applicant chose to continue prosecution, denies Applicant any right to entry of amendments submitted in response to that “final” Office Action.

The Office Action dated 04 April 2005 recites “[t]he term ‘memory’ in claim 1 is used by the claim to mean ‘a processor, a display, and internet interface.’ One of ordinary skill in the art understands that a ‘memory’ can not contain a processor, a display, and an internet interface.”

Regarding indefiniteness rejections, the Federal Circuit has held that the law is clear that if the claims, read in light of the specification, reasonably apprise those skilled in the art of the use and scope of the invention, and if the language is as precise as the subject matter permits, the claims are definite under Section 112, second paragraph. *Shatterproof Glass Corp. v. Libbey-Owens Ford Co.*, 758 F.2d 613, 624, 225 USPQ 634, (Fed. Cir. 1985), *cert. dismissed*, 474 U.S. 976 (1985).

As presented *supra*, at least page 4 of the Specification defines the term memory by stating “[f]igure 2 shows the memory 200 of the present invention ... While the figure shows that the memory includes supporting devices such as a processor 202 and interface, the memory may be a stand-alone memory.”

According to the Federal Circuit “[i]t is well settled that a patent applicant may be his own lexicographer.” *W.L. Gore & Assocs. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 316 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). Here, the claim term “memory” has been

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clearly defined in the specification, and that definition must control examination of those claims that recite these terms.

No evidence or support whatsoever is presented in the Office Action supporting the baseless conclusory assertion that, despite the clear lexicography in the specification to the contrary, "[o]ne of ordinary skill in the art understands that a 'memory' can not contain a processor, a display, and an internet interface." Moreover, no evidence is presented and no assertion is made in the Office Action that the claims, read in light of the specification would not reasonably apprise those skilled in the art of the use and scope of the invention. Thus, no *prima facie* case has been made that claims 1-6 are indefinite. Accordingly Applicants respectfully request reversal of each rejection of claims 1-6.

**C. General Legal Standards for Anticipation and Obviousness**

To anticipate expressly, the "invention must have been known to the art in the detail of the claim; that is, all of the elements and limitations of the claim must be shown in a single prior art reference, arranged as in the claim". *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383, 58 USPQ2d 1286, 1291 (Fed. Cir. 2001). The single reference must describe the claimed subject matter "with sufficient clarity and detail to establish that the subject matter existed in the prior art and that its existence was recognized by persons of ordinary skill in the field of the invention". *Crown Operations Int'l, LTD v. Solutia Inc.*, 289 F.3d 1367, 1375, 62 USPQ2d 1917, 1921 (Fed. Cir. 2002). Moreover, the prior art reference must be sufficient to enable one with ordinary skill in the art to practice the claimed invention. *In re Borst*, 345 F.2d 851, 855, 145 USPQ 554, 557 (C.C.P.A. 1965), *cert. denied*, 382 U.S. 973 (1966); *Amgen, Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1354, 65 USPQ2d 1385, 1416 (Fed. Cir. 2003) ("A claimed invention cannot be anticipated by a prior art reference if the allegedly anticipatory disclosures cited as prior art are not enabled.").

To establish a *prima facie* case of obviousness, three basic criteria must be met. First,



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there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

**D. General Argument Regarding Lexicography**

Applicants note that the Office Action dated 04 April 2005 continues to erroneously opine that, *inter alia*, "after receiving express notice of the Examiner's position that lexicography is *not* invoked, Applicants' responses have not point out the 'supposed errors' in the Examiner's position regarding lexicography invocation in accordance with 37 C.F.R. §1.111(b) (i.e. Applicants did not argue lexicography *was* invoked) ... the Examiner also notes that Applicants have declined the Examiner's express invitation to be their own lexicographer." See Page 8.

Paragraph 19 of the Office Action dated 30 July 2003 first adopted definitions for certain claim terms. Specifically, a definition for "programmable logic device", namely "a logic chip that is programmed by the customer rather than by the manufacturer ... Acronym: PLD", was asserted. Without providing any factual support or reasoning, the defined "programmable logic device" (PLD) was opined to be equivalent to the claim term "programmable logic controller".

In the Reply to that Office Action filed on 23 September 2003, the adopted definitions, and particularly the determination that a "programmable logic controller is a PLD", were traversed as factually erroneous. That traverse stands.

The Federal Circuit has held that a "technical term used in a patent document is interpreted as having the meaning that it would be given by persons experienced in the field of the invention, unless it is apparent from the patent and the prosecution history that the inventor

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used the term with a different meaning.” *Hoechst Celanese Corp. v. BP Chems. Ltd.*, 78 F.3d 1575, 1578, 38 USPQ2d 1126, 1129 (Fed. Cir. 1996).

The definition adopted in the 30 July 2003 Office Action for “programmable logic controller” is erroneous since that definition does not have the meaning that it would be given by persons experienced in the field on the date on the filing date of the present application, 20 March 2000. During examination, no evidence was provided whatsoever supporting the definition of “programmable logic controller” used in the 30 July 2003 Office Action.

In traversing this definition, a first Declaration was filed under 37 CFR § 1.132. This first Declaration was authored and signed by Dr. Ronald D. Williams on 28 February 2004, was entered into the file wrapper on 3 March 2004, and was acknowledged and discussed by the Examiner on page 11 of the Final Office Action dated 18 May 2004.

As indicated in paragraphs 1-6 of the first Declaration, Dr. Williams was one skilled in the art of electrical engineering as of 20 March 2000, the filing date of the application under appeal. Paragraphs 10-11 of the first Declaration of Dr. Williams indicate that the definition used by the examiner is improper because “one skilled in the art would not interpret the term programmable logic controller (PLC) to mean ‘A logic chip that is programmed by the customer rather than by the manufacturer’.” In paragraph 12 of the first Declaration, Dr. Williams states “one skilled in the art would interpret the term ‘programmable logic controller’ to mean a device that follows programmed instructions to provide automated monitoring and/or control functions over a machine and/or process by evaluating a set of inputs. A PLC can be used, for example, to automate complex functions and/or control an industrial process, for example, in machining, packaging, materials handling, and/or other applications.”

In response to Dr. Williams first Declaration, the Final Office Action dated 18 May 2004 stated:

“[t]he Williams Declaration does not address the scope of claim interpretation during ex parte examination. Although the Williams Declaration states the Examiner’s definition is

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incorrect, the Williams Declaration fails to state why the Examiner's definitions are not proper in this context. Moreover, not only does the Williams Declaration fail to provide objective evidence as to why the Examiner's definitions are improper, the Williams Declaration fails to provide evidence as to why Dr. William's definition should be controlling."

As an initial matter, without a showing otherwise, the Williams Declaration is objective evidence. Because Dr. Williams is one of ordinary skill in the art, and because Dr. Williams' definition is the only supported definition of record that addresses the actual claim term "programmable logic controller", the definition of Dr. Williams must be controlling.

Nevertheless, responsive to the assertions in Final Office Action dated 18 May 2004 and the implicit request for additional evidence supporting Dr. Williams' first Declaration, a second Declaration was executed by Dr. Williams on 4 August 2004. The second declaration was entered into the file wrapper on 6 August 2004 and discussed by the Examiner in an Advisory Action dated 8 October 2004. The Office Action dated 04 April 2005 formally acknowledged the previous entry of the second declaration in the record for consideration during the appeal process.

Paragraphs 11-15 of the second Declaration of Dr. Williams clearly explain why the definition for "programmable logic controller" adopted in the 30 July 2003 Office Action is factually incorrect. Paragraphs 17 and 18 provide objective evidence for an additional proper definition of "programmable logic controller" as "a digitally operating electronic apparatus which uses a programmable memory for the internal storage of instructions for implementing specific functions such as logic, sequencing, timing, counting and arithmetic to control through digital or analog input/output modules, various types of machines or processes". In support of this definition, in paragraph 18 Dr. Williams cited NEMA Standard ICS 3-1978, Part ICS3-304 (5). Paragraphs 19 and 20 of Dr. Williams' second Declaration explicitly explain that Dr. Williams' definitions should be controlling because the definition provided in the Office Action dated 30

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July 2003 “does not reflect the meaning of ‘programmable logic controller’ as understood by one skilled in the art.”

Because each of Dr. Williams’ definitions for “programmable logic controller” have “the meaning that it would be given by persons experienced in the field of the invention”, Dr. Williams’ definitions control in claim construction. Utilizing a definition that is unrecognized by those of skill in the art, such as that presented in the Office Actions, would be illogical, counter-productive, and contrary to law.

Yet despite the submission of 2 expert Declarations addressing the proper lexicographical meaning of the claim term “programmable logic controller” and the erroneous definitions assigned to that term in 3 separate Office Actions, the Office Action dated 04 April 2005 still opines that “Applicants’ responses have not point out the ‘supposed errors’ in the examiners position regarding lexicography invocation in accordance with 37 C.F.R. §1.111(b) (i.e. Applicants did not argue lexicography was invoked) ... the Examiner also notes that Applicants have declined the Examiner’s express invitation to be their own lexicographer.”

Applicants further note the general discourse regarding lexicography in the Office Action dated 04 April 2005, as with similar discourses in each previous Office Actions related to Application 09/528,693, fails to present any objection to or rejection of any claim whatsoever.

However, under 37 C.F.R. 111(b) a response must only “reply to every ground of objection and rejection in the prior Office action.” General discussions regarding collateral matters, such as lexicography, that do not present either an objection to or rejection of a claim do not require, nor do they necessarily merit, a detailed response. Any attempt to place legally impermissible and prospective restrictions on Applicants’ due process rights regarding lexicography in the Office Action dated 4 April 2005 is respectfully traversed. In particular, Applicants traverse any attempt to construe silence regarding a collateral matter as an admission under 37 C.F.R. §1.104(c)(3), when in fact no response is legally required. While prosecution is open and prior to the issuance of Application 09/528,693, Applicants respectfully reserve the

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right to "be their own lexicographer" at any time with regard to any past, present, and/or future claim language pertaining to that application.

In light of the above discussion, Applicants respectfully submit that:

1. Absolutely no evidence has been presented to support the definition presented in the Office Actions for "programmable logic controller";
2. the erroneous definition for the term "programmable logic controller" was properly traversed in Applicants' Replies dated 23 September 2003, 3 March 2004, and 6 August 2004;
3. Applicants have repeatedly pointed why the definition of the term "programmable logic controller" proffered in the Office Actions is erroneous and Applicants have repeatedly provided substantial and persuasive evidence proving that fact;
4. Applicants have clearly invoked lexicography in both of Dr. Williams' declarations; and
5. persuasive objective evidence has been presented supporting the definition of a "programmable logic controller" as a "digitally operating electronic apparatus which uses a programmable memory for the internal storage of instructions for implementing specific functions such as logic, sequencing, timing, counting and arithmetic to control through digital or analog input/output modules, various types of machines or processes." See Dr. Williams' second declaration, paragraph 17.

**E. The Rejection of Claims 1-6 Under 35 U.S.C. §102(b) in View of Cragun**

**1. Independent Claim 1**

Independent claim 1 recites "an indicator contained in a memory". Cragun allegedly recites "[i]n the preferred embodiment, scanning device 118 is a laser scanning bar code reader and

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code 117 is a **bar code**.” See col. 4, lines 8-9. Cragun does not disclose explicitly or inherently “an indicator contained in a **memory**”.

Independent claim 1 recites “the network web page comprising an **on-line product support help window**”. Cragun does not disclose explicitly or inherently “the network web page comprising an **on-line product support help window**”.

Independent claim 1 recites a “predetermined product coupleable to a **programmable logic controller**, the programmable logic controller coupleable to a network”. Cragun allegedly recites a “**client computer** [that] scans the object of interest and translates the code into a URL that specifies both the server computer and the location within the server of information that is relevant to the object”. See col. 2, lines 12-16.

Paragraphs 18-21 of Dr. Williams’ first Declaration provide evidence that one skilled in the art would find that Cragun does not disclose explicitly or inherently a “predetermined product coupleable to a **programmable logic controller**”. Further, Cragun does not disclose explicitly or inherently “said indicator associated with said predetermined product and indicative of a network web page where product information is provided for said predetermined product, the network web page comprising an **on-line product support help window**.”

Moreover, Cragun fails to properly establish inherent anticipation. See MPEP 2112. “Inherent anticipation requires that the missing descriptive material is ‘**necessarily present**,’ not merely probably or possibly present, in the prior art.” *Trintec Indus., Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1295, 63 USPQ2d 1597, 1599 (Fed. Cir. 2002). No evidence has been presented that admittedly the “missing descriptive material is ‘**necessarily present**’” in Cragun.

Applicants acknowledge that the Office Action 04 April 2005 recites “[t]he examiner notes that the case cited by Applicants for inherency (i.e. *Trintec Indus., Inc. v. Top-U.S.A. Corp.*) involves inter partes litigation-not ex parte examination. Because the standards for claim interpretation between inter partes litigation and ex parte examination are different, Applicants’

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point is not persuasive.” Applicants respectfully traverse this assertion.

Regarding ex parte examination, the Federal Circuit applies a standard equivalent to that from *Trintec Indus., Inc. v. Top-U.S.A. Corp.*, *supra*. For example, in a case dealing specifically with ex parte examination and specifically cited for the identical proposition by *Trintec*, the Federal Circuit held that to “establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.’” *In re Robertson*, 169 F.3d 743, 49 USPQ2d 1949 (Fed. Cir. 1999) (quoting *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed Cir. 1991)) (emphasis added); see also MPEP § 2112.

Thus, Applicants respectfully submit that the assertion that, with respect to this issue, “the standards for claim interpretation between inter partes litigation and ex parte examination are different” is legally erroneous.

Accordingly, it is respectfully submitted that Cragun does not anticipate independent claim 1 either expressly or inherently. Furthermore, because independent claim 1 is not anticipated, it stands that claims 2-6, each ultimately depending from claim 1, are also not anticipated by Cragun.

Consequently, reversal of the rejection of claims 1-6 is respectfully requested.

## **2. Dependent Claim 4**

Dependent claim 4 recites “a label affixed to the predetermined product, wherein said label comprises said memory”. Cragun allegedly recites “[i]n the preferred embodiment, scanning device 118 is a laser scanning bar code reader and code 117 is a bar code.” See col. 4, lines 8-9. Cragun does not disclose explicitly or inherently “a label affixed to the predetermined product, wherein said label comprises said memory”. Accordingly, it is respectfully submitted that Cragun does not anticipate dependent claim 6.

Consequently, reversal of the rejection of claim 4 is respectfully requested.

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Dependent claim 5 recites "wherein said memory is a **micro-chip memory**". Cragun does not disclose explicitly or inherently "wherein said memory is a **micro-chip memory**". Instead, Cragun allegedly recites "[i]n the preferred embodiment, scanning device 118 is a laser scanning bar code reader and **code 117 is a bar code.**" Accordingly, it is respectfully submitted that Cragun does not anticipate dependent claim 5.

Consequently, reversal of the rejection of claim 5 is respectfully requested.

**F. The Rejection of Claims 1-6 Under 35 U.S.C. §102(e) in View of Reber**

Claim 1, upon which claims 2-5 depend, cites "a predetermined product coupleable to a **programmable logic controller**, the programmable logic controller coupleable to a network, said indicator associated with said predetermined product and indicative of a network web page where product information is provided for said predetermined product, the network web page comprising an **on-line product support help window.**"

Paragraphs 18-21 of Dr. Williams' first Declaration, and paragraphs 21-24 of Dr. Williams' second Declaration, each provide evidence that one skilled in the art would find that Reber does not disclose explicitly or "a predetermined product coupleable to a **programmable logic controller**, the programmable logic controller coupleable to a network".

Further, Reber does not disclose explicitly an "said indicator associated with said predetermined product and indicative of a network web page where product information is provided for said predetermined product, the network web page comprising an **on-line product support help window.**"

While purporting to reject claims 1-6 under 35 U.S.C. §102(e) in view of Reber, the Office Action dated 04 April 2005, particularly paragraph 35, fails to establish a *prima facie* rejection by failing to show that Reber expressly or inherently teaches all of the limitations of claims 1-6.



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Specifically, paragraph 35 of the Office Action dated 04 April 2005 admits that Reber does not expressly disclose "the network web page comprising an on-line product support help window."

Moreover, Reber fails to properly establish inherent anticipation. See MPEP 2112. "Inherent anticipation requires that the missing descriptive material is 'necessarily present,' not merely probably or possibly present, in the prior art." *Trintec Indus., Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1295, 63 USPQ2d 1597, 1599 (Fed. Cir. 2002). No evidence has been presented that admittedly the "missing descriptive material is 'necessarily present'" in Reber.

Accordingly, it is respectfully submitted that Reber does not anticipate independent claim 1. Furthermore, because independent claim 1 is not anticipated, it stands that claims 2-6, each ultimately depending from claim 1, are also not anticipated by Reber.

Consequently, reversal of the rejection of claims 1-6 is respectfully requested.

**G. The Rejection of Claims 1-6 Under 35 U.S.C. §103(a) in View of Cragun and Ohanian**

None of the applied references, either alone or in any combination, establish a *prima facie* case of obviousness.

Ohanian allegedly recites "the present invention embodies a data input apparatus that obtains information relative to a target. The apparatus includes a processor, a wireless data receiver, and an associated data capture engine. The wireless data receiver is coupled to the processor and receives electromagnetic data from at least one resonator, such as a dipole, positioned relative to the target. The data capture engine is also coupled to the processor and receives data from an associated data carrier, such as a machine-readable symbol..." See column 2 lines 10-19.

Paragraphs 18-25 of Dr. Williams' first Declaration, and paragraphs 25-28 of Dr. Williams' second declaration, each provide evidence that one skilled in the art would find that Neither Cragun nor Ohanian expressly or inherently teach or suggest "...a predetermined product

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coupleable to a **programmable logic controller**, the programmable logic controller coupleable to a network, said indicator associated with said predetermined product and indicative of a network web page where product information is provided for said predetermined product, the network web page comprising **an on-line product support help window.**" Thus, even if combinable or modifiable, the applied references do not expressly or inherently teach or suggest every limitation of the claims.

Further, attempting to combine Cragun with Ohanian would render one or the other inoperative. For example, attempting to replace Cragun's "scanning device" (see Fig. 1A element 118) with Ohanian's "wireless data receiver" (see col.2, lines 14-15) would render Cragun's system inoperative for its intended function of scanning barcodes.

Thus, there would have been no motivation or suggestion to modify or combine the applied references, and one skilled in the art would not have had a reasonable expectation of success in combining or modify the applied references. In addition, the applied references do not expressly or inherently teach or suggest every limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness.

Accordingly, it is respectfully submitted that Cragun in view of Ohanian does not render obvious independent claim 1. Furthermore, because independent claim 1 is not rendered obvious by either applied combination, it stands that claims 2-6, each ultimately depending from claim 1, are also not rendered obvious by Cragun in view of Ohanian.

Consequently, reversal of the rejection of claims 1-6 is respectfully requested.

**H. The Rejection of Claims 1-6 Under 35 U.S.C. §103(a) in View of Ohanian and Hudetz**

Hudetz allegedly cites "[a] system and method for using identification codes found on ordinary articles of commerce to access remote computers on a network. In accordance with one embodiment of the invention, a **computer** is provided having a database that relates Uniform Product Code ('UPC') numbers to Internet network addresses (or 'URLs'). To access an

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Internet resource relating to a particular product, a user enters the product's UPC symbol manually, by swiping a bar code reader over the UPC symbol, or via other suitable input means. The database retrieves the URL corresponding to the UPC code. This location information is then used to access the desired resource." See Abstract.

Paragraphs 22-29 of Dr. Williams' first Declaration, and paragraphs 25-31 of Dr. Williams' second Declaration, each provide evidence that one skilled in the art would find that Neither Ohanian nor Hudetz expressly or inherently teach or suggest "an indicator contained in a memory ... a predetermined product coupleable to a programmable logic controller, the programmable logic controller coupleable to a network."

Further, attempting to combine Hudetz with Ohanian would render one or the other inoperative. For example, attempting to replace Hudetz' "bar code reader" (see col. 3, line 32) with Ohanian's "wireless data receiver" (see col.2, lines 14-15) would render Hudetz' system inoperative for its intended function of scanning barcodes.

Thus, would have been no motivation or suggestion to modify or combine the applied references, and one skilled in the art would not have had a reasonable expectation of success in combining or modify the applied references. In addition, the applied references do not expressly or inherently teach or suggest every limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness.

Accordingly, it is respectfully submitted that Ohanian in view of Hudetz does not render obvious independent claim 1. Furthermore, because independent claim 1 is not rendered obvious by either applied combination, it stands that claims 2-6, each ultimately depending from claim 1, are also not rendered obvious by Ohanian in view of Hudetz.

Consequently, reversal of the rejection of claims 1-6 is respectfully requested.

**VIII. CLAIMS APPENDIX**

See Appendix A submitted with original appeal brief.

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**IX. EVIDENCE APPENDICES**

See Appendices B and C submitted with original appeal brief.

**X. RELATED PROCEEDINGS APPENDIX**

There are no related proceedings.

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**SUMMARY**

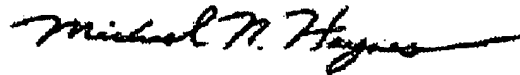
In view of the above, Applicants submit that all claims on appeal distinguish over the applied art and respectfully request that the rejections of these claims should be reversed.

Applicants therefore respectfully request that the Board of Patent Appeals and Interferences reverse the decision rejecting claims 1-6 and direct that the application be passed to issue.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. §1.16 or §1.17 to Deposit Account No. 19-2179. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

Michael Haynes PLC



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